IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.244 OF 2001

Chandrakant Surve ...Applicant

vs.

1. Naresh Behari
2. Hotel Royal
3. State of Maharashtra ...Respondents

Mr.H.V.Mehta for the Applicant
Mr.Y.M.Nakhwa,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 7,2006.

JUDGMENT:

1. Office noting shows that the first and second Respondents are served with the notice and Affidavit of service has been filed. Office noting also shows that the first and the second Respondents are represented by Shri Ganesh S. Vaidya, Advocate.

2. By order dated 13th September 2004, notice for final disposal was issued by this Court. None appears for the first and second Respondents when the Revision Application is called out today. Learned A.P.P. appears for the State.

3. The Applicant who is the Insurance Inspector of the Employees' State Insurance Corporation was the complainant in a complaint filed by the said Corporation alleging commission of offences under section 85-A punishable under section 85(i)(b) of the Employees' State Insurance Act, 1948

(hereinafter referred to as the said Act of 1948). A complaint was filed on 19th October 1995 and the process was issued in the said complaint. By a Judgment and Order dated 9th October 2000, the learned Metropolitan Magistrate, 25th Court, Mazgaon, Mumbai discharged the accused i.e. the first and second respondents herein. The learned Trial Judge relied upon the decision of the Apex Court in case of Common Cause Vs. Union of India and others (1996 A.I.R. SCW page 2279). The learned Judge held that the first and second Respondents were attending the case for a period of more than two years and the trial had not commenced.

4. The learned Counsel for the Applicant placed reliance on the decision of the Apex Court in case of P. Ramachandra Rao Vs. State of Karnataka (A.I.R. 2002 S.C. page 1856) and submitted that the decision of the Apex Court in case of Common Cause (supra) is no longer a good law. He pointed out that the present Revision Application was filed on 7th August 2001 and therefore, when the case of P.Ramachandra Rao was decided, the impugned order had not attained finality. None appears for the first and second Respondents. The learned A.P.P. has submitted to the orders of the Court.

5. I have considered the submissions. The complaint has been quashed and the first and second Respondents have been discharged relying upon the decision of the Apex Court in case of Common Cause (supra). The Constitution Bench of seven

Hon'ble Judges of the Apex Court considered the question of correctness of the decision in case of Common Cause (supra). The Constitution Bench of the Apex Court held that the law laid down in case of Common Cause (supra) as well as in cases of Raj Deo Sharma (I), (II) (1999 A.I.R. SCW page 3522) and (1999 Cr.L.J. page 4541) was not correct as the court could not have prescribed the period of limitation beyond which the trial of a criminal case or criminal proceedings cannot continue and must mandatorily be closed following by an order acquitting or discharging the accused. In clause 4 of paragraph 30 of the decision in the case of P. Ramachandra Rao, it is held thus :

(4) It is neither advisable, not feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. **The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause Case (I), Raj Deo Sharma Case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to**

act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R.Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and a mandatorily obliging the court of terminate the same and acquit or discharge the accused."

6. Turning back to the facts of the present case, the learned Trial Judge noted that the case was filed on 3rd November 1995 and the trial had not commenced for a period of more than two years. Only on the basis of the decision of the Apex Court in case of Common Cause (supra), the impugned order of discharge has been passed. Now, the larger Bench has held that the case of the Common Cause (supra) was not correctly decided and the decision in case of Common Cause (supra) has been expressly overruled. The Constitution Bench in paragraph 37 has, however, observed thus :

"37. And lastly, it is clarified that this decision shall not be a ground for re-opening a case or proceeding by setting aside any such acquittal or discharge as

is based on the authority of 'Common Cause' and Raj Deo Sharma's cases and which has already achieved finality and reopen the trial against the accused therein."

7. The decision of the Constitution Bench was delivered on 16th April 2002. The present Revision Application was filed on 7th August 2001 and was thus pending on the date on which the Constitution Bench delivered the Judgment. Therefore, on the date on which the Apex Court delivered the said Judgment, impugned order had not attained finality.

8. In this view of the matter, the law laid down by the Apex Court in case of P. Ramachandra Rao (supra) will squarely apply to the facts of the case. The impugned order, therefore, will have to be quashed and set aside and the complaint filed by the Applicant will have to be restored.

Hence, I pass the following order :

i) Rule is made absolute in terms of prayer clause (a).

ii) The complaint case No.73 of 1995 will now proceed in accordance with law.

JUDGE